

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

UNITED STATES OF AMERICA,

Case No. 2:13-CR-309 JCM (VCF)

Plaintiff(s),

## ORDER

V.

## PAUL LUTHER DIX,

**Defendant(s).**

Presently before the court is *United States v. Dix*, case no. 2:13-cr-00309-JCM-VCF. Paul Luther Dix (“petitioner”) was sentenced to 83 months in prison to run concurrently to State of Nevada case no. C-13-291362-1 and 3 years of supervised release on January 12, 2015. Petitioner then filed a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. (Doc. #41). The United States (“respondent”) has not filed a response to the motion and more than 30 days have passed. Petitioner also filed a motion for leave to proceed *in forma pauperis* (doc. #42) as well as a motion for appointment of counsel. (Doc. #48).

Pursuant to local rule 1-1, a party seeking to proceed *in forma pauperis* must include a financial affidavit disclosing the applicant's income, assets, expenses, and liabilities. Additionally, a motion to proceed *in forma pauperis* filed by an inmate, as here, must be accompanied by a certificate from the institution housing the inmate that certifies the amount of funds held in the inmate's account for the last six (6) months. Local Rule LSR 1-2.

25 Petitioner has submitted an affidavit showing his inability to pay the fees and costs  
26 associated with his appeal. (Doc. #42). However, he has failed to comply with Local Rule LSR 1-  
27 2 by not submitting a certified copy of his inmate account for the last six months.

1 In his motion for appointment of counsel, petitioner requests counsel to determine whether  
2 he may qualify for federal habeas relief under 28 U.S.C. § 2255 or 28 U.S.C. § 2241 in light of  
3 *Johnson v. United States*, 135 S.Ct. 2551 (2015). However, petitioner was not sentenced under the  
4 Armed Career Criminal Act (“ACCA”), 18 U.S.C. § 924(e). The ACCA requires imposition of a  
5 minimum 15-year term of imprisonment for reoffenders convicted of unlawful possession of a  
6 firearm under 18 U.S.C. 922(g), who have three prior state or federal convictions for violent  
7 felonies or serious drug offenses. Nowhere in petitioner’s plea agreement is there any mention of  
8 18 U.S.C. 924(e) and his guideline calculations do not apply USSG § 4B1.4. Furthermore, as  
9 petitioner was only sentenced to 6 years and 11 months, it evident that he was not penalized under  
10 this provision.

11 | Accordingly,

12 It is ORDERED that respondent file a response to petitioner's motion to vacate, set aside,  
13 or correct sentence pursuant to 28 U.S.C. § 2255 no later than 30 days from the date of this order.

14 IT IS FURTHER ORDERED that petitioner's application to proceed *in forma pauperis*  
15 (doc. #42) be, and the same hereby is DENIED. Petitioner may refile his request with the required  
16 documentation.

17 IT IS FURTHER ORDERED that petitioner's motion for appointment of counsel (doc.  
18 #48) be, and the same hereby is DENIED.

19 DATED February 5, 2016.

James C. Mahan  
UNITED STATES DISTRICT JUDGE